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OFFICE OF PETITIONS

In re Patent No. 7,639,923	: DECISION ON REQUEST
Ikeda et al.	: FOR
Issue Date: 12/29/2009	: RECONSIDERATION OF
Application No. 10/528969	: PATENT TERM ADJUSTMENT
Filed: 10/03/2005	: and
Atty Docket No.	: NOTICE OF INTENT TO ISSUE
P31939-03	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 20, 2010, which is being treated as a request for reconsideration under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred seventy-three (573) days. As clarified below, the petition will be treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred eighty-eight (688) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by six hundred eighty-eight (688) days is **GRANTED to the extent indicated herein**.

The "B" delay period is 190 days, not 75 days as calculated by patentee. 37 CFR 1.702(b) states that the period of adjustment under 35 U.S.C. 154(b) is the period beginning three years after the date on which an application was filed under 35 U.S.C. 111(a), or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application. This application was filed pursuant to 35 U.S.C. 371(b), not under 35 U.S.C. 111(a), and the national stage commenced on March 25, 2005. Further, the period from the date the Request for Continued Examination was filed to the issue date of the patent is not included in the "B" delay period. See 35 U.S.C.

154(b)(1)(B)(i). Thus, the period of delay is 267 days, counting the number of days beginning on March 26, 2008, the day after the date three years after the national stage commenced, and ending on December 17, 2008, the day before the date the Request for Continued Examination was filed. See 1.703(b). Considering the overlap of 77 days, from March 26, 2008, the day after the date three years from the date the national stage commenced to June 10, 2008, the date a non-final Office action was mailed, the non-overlapping period of adjustment is 190 (267 – 77) days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **six hundred eighty-eight (688) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,639,923 B2

DATED : Dec. 29, 2009

DRAFT

INVENTOR(S) : Ikeda et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 498 days.

Delete the phrase "by 498 days" and insert -- by 688 days--